IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 264 OF 1992

The State of Maharashtra ...Appellant.

V/s

Ibrahim s/o Yakub Shaikh
Age: 45 R/o. Kamraj
Nagar, Survey No.10,
Yerwada, Pune - 6. ...Respondent.

Mr. D.P. Adsule for the appellant.

None for the respondent, though served.

CORAM: V.M.KANADE,J.

DATE: 9th December, 2004

ORAL JUDGMENT:

1. Heard the learned APP for the State. None appears for the respondent though he is served.

2. The allegation against the accused is that he is dealing in scrap material and, during search which was taken of his shop on 16/1/1986, railway material worth Rs 400/- was found in his possession. The accused confessed that he has purchased the said material from hawkers. A certificate was obtained from the expert who stated that the property in question belonged to railways. A charge was framed under section 3(a) of

the R.P. (U.P.) Act, 1966 and the Trial Court perused the evidence adduced by the prosecution. However, the accused was acquitted essentially on the ground that the search and seizure which was taken was in violation of section 100 of the Criminal Procedure Code. The Trial Court further observed that the confession was not admissible in evidence as the provisions of section 30 were not attracted in the instant case.

3. The learned APP has taken me through the judgment and order of the Trial Court as also the evidence adduced by the prosecution. P.W. 3 - Dhondiba Narayan Jadhav has admitted in his cross-examination that the property which was seized from the accused was not in a serviceable condition. There is no evidence to show that there was a theft of the said property from the railway yard. Thus, the confession which was recorded, in my view, is clearly in breach of section 30 of the Evidence Act. Secondly, the property in question was admittedly not in serviceable condition. P.W.3 also was not in a position to state how old the property was. He has further admitted that the propery which was in unserviceable condition is auctioned and sold. There is no reason to interfere with the order of the Trial Court. Trial

Court has given cogent reasons for coming to the conclusion that the prosecution had not proved its case beyond the reasonable doubt. Appeal is, therefore, dismissed.

V.M. KANADE, J.